

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

KENDEL W. MCKINNEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 09-cv-723-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Petitioner Kendel McKinney’s Motion for a Certificate of Appealability (Doc. 13). A petitioner proceeding under Section 2255 of Title 28 may not move forward with an appeal without such a certificate. 28 U.S.C. § 2253(c)(1) (2006); *see Ouska v. Cahill-Masching*, 246 F.3d 1036, 1045 (7th Cir. 2001).

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2); *see Tennard v. Dretke*, 542 U.S. 274, 282 (2004); *Ouska*, 246 F.3d at 1045. To make such a showing, the petitioner must “demonstrate that reasonable jurists could debate whether [the] challenge in [the] habeas petition should have been resolved in a different manner or that the issue presented was adequate to deserve encouragement to proceed further.” *Ouska*, 246 F.3d at 1046; *accord Tennard*, 542 U.S. at 282; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (certificate of appealability should issue if the petitioner demonstrates “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”).

Here, in its Memorandum and Order (Doc. 11) of July 25, 2011, the Court denied McKinney's Motion to Vacate, Set Aside, or Correct Sentence (Doc. 1) pursuant to § 2255. More precisely, the Court found that McKinney did not suffer from ineffective assistance of trial counsel and that he entered into a voluntary guilty plea. For the reasons discussed in the merits order, this decision is strongly supported by the record of the related criminal proceeding. Put simply, the Court does not believe that reasonable jurists could debate whether the habeas petition should have been decided differently.

Being fully advised of the premises, the Court **DENIES** McKinney's Motion for a Certificate of Appealability (Doc. 13).

IT IS SO ORDERED
DATED: August 16, 2011

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE